

STATE OF VERMONT Agency of Human Services (AHS)		
HIRING STANDARDS	REVISION HISTORY: 9/1/92 (Previous title Agency Hiring and Performance Evaluation Practices)	Chapter/Number 4.02
	EFFECTIVE DATE: March 3, 2008	Attachments/Related Documents:
Authorizing Signature: <i>Signed by: Cynthia LaWare, Secretary, Agency of Human Services on February 6, 2008</i>		

PURPOSE: To protect client safety and the public interest by establishing a consistent framework for considering the background of prospective AHS employees prior to final hire.

BACKGROUND AND RATIONALE: Changes in Vermont State Law in 2006 broaden employers' ability to conduct criminal records checks on prospective employees. Previously, departments in AHS have established background check policies or practices for specific job roles either as "criminal justice agencies" (Department of Corrections) or "qualified entities" providing care to vulnerable populations. This policy establishes the Agency's general expectations with respect to background checks by requiring general background checks for all prospective employees and more particularized checks for employees in certain positions, as described below.

DEFINITIONS:

Background Check: A background check is the process of collecting any one or a combination of reports about individuals for employment purposes. The scope of a background check can include a range of activities, including but not limited to:

- ✓ verification of education/work history
- ✓ checking references provided by the applicant
- ✓ checking references not provided by the applicant
- ✓ checking licensing, suspension, disbarment and "excluded" databases
- ✓ checking abuse registries
- ✓ reviewing driving records
- ✓ reviewing criminal records

SCOPE: This policy applies to all hiring, including exempt, classified, temporary and contractual (on the state payroll) employees, by the Agency of Human Services and all of its departments and offices. "Hiring" includes transfers and promotions as well as new hires.

STANDARDS:

General Background Check Requirements:

1. Hiring managers will not extend any offer of employment unless they have, at a minimum, checked references furnished by the applicant. Reference checks and verification of work history should also include follow up with prior supervisors of the applicant. As educational credentials are not confirmed during the application process, these may also be verified, particularly when directly germane to the requirements of the position. Certain positions may require additional checks, as described below. Outcomes of all reference check activity should be reduced to writing and placed in the hiring folder.
2. If an applicant chosen as a finalist for a position listed a criminal conviction on the employment application, the hiring manager should follow up with the applicant during the interview and reference checking process for the applicant's explanation of the nature and dates of the conviction.
3. All finalists for positions with federal funding must be checked against the "Excluded Parties List System" maintained on-line by the General Services Administration. An additional check of the exclusions database maintained by the federal Health and Human Services Office of the Inspector General is advised when hiring health care professionals. Hiring Managers must consult with their Personnel Administrator if a finalist for hire is on an exclusion list to assess the impact the exclusion has on the hiring decision.
4. The credentials of all finalists for positions requiring a professional license must be verified against the database maintained by the Vermont Secretary of State or other appropriate licensing agency prior to a final or conditional offer of employment.

Motor Vehicle, Registry & Criminal Background Check Requirements:

To further protect the public interest, as well as to ensure that the employees hired by the Agency do not pose a risk to those served, the Agency of Human Services will conduct a record check of prospective employees. The record checks outlined below require written consent of the applicant and are appropriate only after a conditional offer of employment has been made. The forms to initiate the record check(s) must be signed by the prospective employee and submitted by the hiring manager to the AHS HR Unit.¹ The AHS HR Unit will process the record check and communicate the results to the hiring manager. If the record check results reveal a potential concern about the applicant, the AHS HR Unit will consult with the hiring manager regarding the impact on the job offer. If the HR staff and hiring manager are unable to reach a mutual conclusion about withdrawing a job offer on the basis of the candidate's record check, the matter will be reviewed with the department commissioner for final determination as appointing authority.

1) Motor Vehicle Driver Check

This record check is required for any position being filled where client transport (in either state or personal vehicles) is expected as part of the regular job duties.

¹ A department may establish a different protocol by mutual agreement with the AHS HR Unit.

Assessment of possible disqualification for the position due to the results of the record check will be made on a case-by-case basis and will include consideration of the seriousness of the offense(s), time elapsed since the offense(s) and whether or not there were multiple or repeated offenses.

2) Vermont Abuse Registry checks

The registries described below must be checked when applicable to any position being filled where the duties involve providing care, custody, treatment, transportation or supervision of children or vulnerable adults as defined by statute (33 V.S.A. Sec. 6902).

- a) Child Abuse Registry - database maintained by the Department for Children and Families to provide information about people who have been substantiated for the abuse, neglect, and/or exploitation of children.
- b) Adult Abuse Registry – database maintained by the Department of Disabilities, Aging and Independent Living to provide information about people who have been substantiated for the abuse, neglect and/or exploitation of vulnerable adults

A diligent effort will be made to query similar out-of-state records pertaining to candidates who are from out-of-state or have been residents of Vermont for less than five years. If such records are available, the candidates will be checked against the registries from the state(s) where they have lived in the preceding ten years.

Candidates for a position subject to the abuse registry checks described above will generally be disqualified on the basis of any history of abuse, neglect, or exploitation. Exceptions may be deemed appropriate based on an assessment of mitigating factors. Such factors will minimally include (but not be limited to):

- ✓ the position type and the nature of direct and/or unsupervised services provided;
- ✓ age of the individual at the time of the substantiation;
- ✓ nature and seriousness of the substantiation;
- ✓ the person's involvement with the criminal justice system and/or human services system since the substantiation;
- ✓ the amount of time that has passed since the substantiation and,
- ✓ the candidate's overall record including current references and recommendations of past employers.

3. Criminal Record checks

- a) A criminal record check may be conducted on two levels:
 - 1. Vermont, which is obtained from the Vermont Criminal Information Center (VCIC) and is available to any employer. A state record check includes the sex offender registry.
 - 2. National, which is obtained from the Federal Bureau of Investigation (FBI) through VCIC and is available only in certain employment situations, including criminal justice agencies and qualified entities under the National Child Protection Act. These are fingerprint-supported record checks which require the candidate to be fingerprinted at an Identification Center, which is generally a local law enforcement agency. A national record check includes information on federal offenses and state offenses reported to the national database, as well as a check of Vermont criminal

records and sex offender registry.

b) The Agency of Human Services requires a Vermont criminal record check for any position being filled.

c) A National record check will also be required, to the extent permitted by law, in those situations where a candidate has been a Vermont resident for less than 5 years.

d) Departments in AHS may opt to implement a general requirement for National record checks based on the particular needs of the department. Due to the administrative and legal issues affecting background checks and employment practices, such department procedures must be reviewed and approved by the HR Unit prior to implementation.

d) Disqualification based on criminal history

In those cases where the chosen applicant has a criminal record, the AHS HR Unit will consult with the hiring manager to determine the candidate's fitness for the job in question in light of the conviction. Many factors will enter into this assessment, including the philosophies underlying the AHS 4 Key Practices and the guiding principle of Corrections that people can change. Accordingly, this policy does not define disqualifying criminal offenses. Rather, AHS adopts the directives of the federal Equal Employment Opportunity Commission (EEOC) in setting general standards for consideration of background checks and determining whether or not an individual candidate will be disqualified for employment on the basis of conviction or arrest records. As specified in EEOC Directive #915.003 dated 4/19/06, the criteria for disqualification shall be job related and consistent with business necessity:

“ . . . [W]ith respect to conviction records, the employer must show that it considered the following three factors: (1) the nature and gravity of the offense(s); (2) the time that has passed since the conviction and/or completion of the sentence; and (3) the nature of the job held or sought. A blanket exclusion of persons convicted of any crime thus would not be job-related and consistent with business necessity. Instead, the above factors must be applied to each circumstance. Generally, employers will be able to justify their decision when the conduct that was the basis of the conviction is related to the position, or if the conduct was particularly egregious.

Departments may establish disqualification criteria based on job roles and business necessity, provided that a waiver process is also established.

Applicability:

- 1) This policy applies to prospective employees for positions under recruitment, including external and internal applicants.
- 2) When permitted by department policy or authorized by the appointing authority, a hiring manager may rely on the results of a previous motor vehicle, registry and/or criminal record check when hiring an internal applicant for another position in the same department.
- 3) Any department seeking to conduct background checks on incumbent employees who are not changing positions must consult with the HR Unit to determine if this is permitted within law and the collective bargaining agreements.

Implementation and Responsibilities:

The AHS HR Unit will consult with each department regarding the process for screening background checks and to specify the internal procedures for: 1) obtaining and documenting the background check data; 2) maintaining confidentiality; and, 3) ensuring that the background check standards are applied consistently. These internal procedures will provide a process for hiring managers to: a) document completion of general background requirements; b) initiate appropriate motor vehicle, registry, and criminal record checks; and c) receive confirmation from the HR Unit that the record check process is completed.

Hiring managers must ensure that the offer of employment is strictly conditional until the required background checks have been completed. Therefore, departments may not hire candidates while the process for a motor vehicle, abuse registry or criminal background check is pending unless both of the following conditions can be met:

1. The candidate will start work in original probation and is informed in writing that the background check is pending and that s/he will be subject to termination if the background check results are found to be disqualifying or of a nature that causes management to lose confidence that the applicant should continue to work in the probationary position.
2. The candidate will start work in a capacity that does not place the public or vulnerable populations at risk.

The AHS HR Unit will ensure that job postings specify that candidates must pass any level of background investigation applicable to the position, including a criminal record check. The AHS HR Unit will coordinate with hiring managers and the Department of Human Resources to include similar language regarding the background check requirement in revisions of AHS job class specifications.

COMPLIANCE:

Adherence to this policy and related protocols is a shared responsibility of the AHS HR Unit, Appointing Authorities, and hiring managers. The AHS HR Unit will develop the form(s) to use in documenting compliance.

ENFORCEMENT:

The AHS HR Unit will administer this policy through its internal processes. A personnel action to hire a new employee will not be processed until appropriate documentation is received.